United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

JANUARY TERM, 1901.

No. 1051.

66

CHARLES S. RICHARDS, APPELLANT,

vs.

EUNICE C. BIPPUS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED FEBRUARY 12, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 25, 1901.

In the Court of Appeals of the District of Columbia.

CHARLES S. RICHARDS, Appellant,
vs.
EUNICE C. BIPPUS.
No. 1051.

a Supreme Court of the District of Columbia.

EUNICE C. BIPPUS
vs.
CHARLES S. RICHARDS.
No. 42145. At Law.

UNITED STATES OF AMERICA,
District of Columbia, *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration, &c.*

Filed May 12, 1898.

In the Supreme Court of the District of Columbia, the 12th Day of May, 1898.

EUNICE C. BIPPUS, Plaintiff,
vs.
CHARLES S. RICHARDS, Defendant.
No. 42145. At Law. Docket No. —.

I. The plaintiff sues the defendant for money payable by the defendant to the plaintiff, for that, on the sixth day of September, 1894, the defendant, Charles S. Richards, by the name of "C. S. Richards," made his certain promissory note, now overdue, and thereby promised to pay to the order of the plaintiff, Eunice C. Bippus, by the name of Eunice C. Bippus, six (6) months after date, three hundred and fifty ($350.00) dollars, with interest thereon at the rate — 10 per centum per annum, and payable at the National Bank of the Republic; that at its maturity the said note was duly presented for payment and was dishonored, notwithstanding which the said note has not been paid.

II. And for money payable by the defendant to the plaintiff for goods bargained and sold by the plaintiff to the defendant, and for goods sold and delivered by the plaintiff to the defendant, and for work done and materials provided by the plaintiff for the defendant

at his request, and for money lent by the plaintiff to the defendant, and for money paid by the plaintiff for the defendant at his request,
and for money received by the defendant for the use of the
2&3 plaintiff, and for money found to be due from the defendant to the plaintiff on accounts stated between them.

And the plaintiff claims three hundred and fifty dollars ($350.00), with interest, at the rate of ten per cent. per annum, from the sixth day of September, 1894, less twenty-five dollars ($25.00) paid October 1, 1896, and five dollars ($5.00) paid January 15, 1898, according to the particulars of demand hereto annexed, besides costs of this suit.

THOMAS M. FIELDS,
Attorney for Plaintiff.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise judgment.

THOMAS M. FIELDS,
Attorney for Plaintiff.

Particulars of Demand.

Secured by deed of trust.

$350.00. WASHINGTON, D. C., *Sept. 6th*, 1894.

Six months after date I promise to pay to the order of Eunice C. Bippus three hundred aud fifty dollars, at the National Bank of the Republic, value received, with interest at 10 per cent. per annum.

No. —, due ——.

C. S. RICHARDS.

(Endorsed :) Oct. 1, '96.—Paid on within $25.00.
" Jan. 15, '98.— " " " $5.00.

* * * * * * *

4 *Pleas, &c.*

Filed June 4, 1898.

In the Supreme Court of the District of Columbia.

* * * * * * *

I. The defendant says that he never promised as alleged.

II. And for a further plea the defendant says that he never was indebted as alleged.

W. C. PRENTISS,
Attorney for Defendant.

In the Supreme Court of the District of Columbia.

* * * * * * *

DISTRICT OF COLUMBIA, *ss:*

Charles S. Richards, being duly sworn, says that he is the defendant in the above-entitled cause; that he never executed any

note such as is described in the plaintiff's declaration, and that he never owed the plaintiff anything, never received any consideration from her, and never had any dealings with her.

CHARLES S. RICHARDS.

5 Subscribed and sworn to before me this 27 day of May, A. D. 1898.

ISAAC C. SLATER,
Notary Public.

[SEAL.]

Joinder of Issue.

Filed June 11, 1898.

In the Supreme Court of the District of Columbia, the 11th Day of June, 1898.

* * * * * * *

The plaintiff joins issue on the defendant's pleas.

THOMAS M. FIELDS,
Attorney for Plaintiff.

* * * * * * *

6 Supreme Court of the District of Columbia.

WEDNESDAY, *November 8th*, 1899.

The court resumes its session pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * * * *

Now comes here as well the plaintiff, by her attorney, Mr. Thomas M. Fields, as the defendant, by his attorney, Mr. W. C. Prentiss, and a jury of good and lawful men of this District, to wit, Eugene L. Bowland, G. T. Greenlaw, Jas. A. Arnold, Jas. B. Smith, Jacob N. Belt, Edward Woodey, Jr., Wm. C. Crumbaugh, Gen. W. Henderson, James L. Whiteside, Baker McBonald, George H. Hoffman, and Wm. D. Castle; and thereupon the plaintiff, by leave of the court, withdraws a juror, and the other jurors are discharged from the further consideration of the case, and on motion leave is granted the plaintiff to amend her declaration as she may be advised, and the case is continued for the term.

7 *Plea, &c.*

Filed January 17, 1900.

In the Supreme Court of the District of Columbia.

* * * * * * *

For further plea the defendant says that the plaintiff ought not to have or maintain her said action upon her declaration as amended, for that the said plaintiff is, and ever since before September 6th, 1894, has been, the lawful wife of one John Bippus.

W. C. PRENTISS,
Attorney for Defendant.

DISTRICT OF COLUMBIA, *ss:*

Charles S. Richards, being duly sworn, says that he is defendant named in the pleading to which this affidavit is attached; that he is personally acquainted with the plaintiff, and that she is, and ever since before September 6th, 1894, has been, the lawful wife of one John Bippus, who is now living.

CHARLES S. RICHARDS.

Subscribed and sworn to before me this fourth day of January, A. D. 1900.

MILDRED H. PARKER,
Notary Public, D. C.

[SEAL.]

8 *Replication to Plea, &c.*

Filed February 2, 1900.

In the Supreme Court of the District of Columbia.

* * * * * * *

For replication to the plea of the defendant to the amended declaration, the plaintiff says that the note declared upon was and is her sole and separate property, and the money and value advanced therefor by her to the defendant were her sole and separate estate, and the whole transaction, note, and contract were in relation to her sole and separate estate, and not otherwise.

THOMAS M. FIELDS,
Attorney for Plaintiff.

Demurrer to Replication.

Filed February 9, 1900.

In the Supreme Court of the District of Columbia.

* * * * * * *

9 The defendant says that the plaintiff's replication is bad in substance.

W. C. PRENTISS,
Attorney for Defendant.

Among the matters of law intended to be argued are:

1st. That the said replication is a departure from the declaration, in that the plaintiff in her declaration sues as at common law, and in her replication relies upon a statutory right inconsistent with her common-law right.

2nd. That it is not alleged that the plaintiff is or was a citizen of the District of Columbia or entitled to separate estate by virtue of any law of which this court can take judicial notice.

10 Supreme Court of the District of Columbia.

FRIDAY, *June* 29, 1900.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

Upon hearing the defendant's demurrer to the replication of the plaintiff to the plea to the declaration as amended, it is considered that said plea is bad, and that said demurrer be, and hereby is, sustained as to said plea of the defendant, with leave to the defendant to plead over within ten days.

11 *Amended Pleas to Amended Declaration.*

Filed July 9, 1900.

In the Supreme Court of the District of Columbia.

* * * * * * *

Comes now the defendant and, by leave of the court first had and obtained, for amended and further pleas to the plaintiff's declaration as amended, says:

1. That he never promised as alleged.
2. That he never was indebted as alleged.
3. And for a further plea to the first and second counts of the said declaration says that the plaintiff is now and ever since before the 6th day of September, 1894, has been the lawful wife of one John Bippus, and that the said alleged causes of action are not in relation to her sole and separate estate, if any she have.
4. And for a further plea to the first count of the said declaration the defendant says that the said alleged promissory note was made and delivered by the defendant to one John Bippus, lawful husband of the plaintiff, for a loan of $300 made by the said John Bippus to the defendant, and that before the making of the said loan and note it was, corruptly and against the form of the statute in such case made and provided, agreed by and between the said John Bippus and the defendant that the said John Bippus should lend to the defendant

12 the said sum of $300 for the period of six months, and that for the forbearance of said sum for the said term of six months the defendant should pay the said John Bippus the sum of $50, and in addition thereto interest on the said $300 and the said $50 at the rate of 10 per centum per annum, and that for securing the said loan of $300 and the payment of the said sum of $50 and the said interest the defendant should make and deliver to the said John Bippus the said alleged promissory note; and that in pursuance of said corrupt and unlawful agreement the defendant thereupon made and delivered to said John Bippus the said alleged promissory note, and the said John Bippus did thereupon accept the said alleged note and lend and advance to the defendant the said sum of $300; and the defendant says that the said sum of $50 and

the said interest at the rate of ten per centum per annum, so agreed to be paid to said John Bippus for said loan and forbearance, as aforesaid, and so secured, as aforesaid, exceeds the rate of ten dollars for the forbearing of $100 for one year, contrary to the statute in such case made and provided, whereby and by force of the said statute, inasmuch as the said alleged note was given in part to secure the payment of the said sum of fifty dollars, contrary to said statute, the said note was and is wholly void.

5. And for a further plea to the said first count of the said declaration the defendant says that the said alleged promissory note was made and delivered by the defendant to one John Bippus, lawful husband of the plaintiff, for a loan of $300 made by the said John Bippus to the defendant, and that before the making of the said loan and note it was, corruptly and against the form of the
13 statute in such case made and provided, agreed by and between the said John Bippus and the defendant that the said John Bippus should lend to the defendant the said sum of $300 for the period of six months, and that for the forbearance of said sum for the said term of six months the defendant should pay the said John Bippus the sum of $50, and in addition thereto interest on the said $300 and the said $50 at the rate of ten per centum per annum, and that for securing the said loan of $300 and the payment of the said sum of $50, and the said interest, the defendant should make and deliver to the said John Bippus the said alleged promissory note, and that, in pursuance of said corrupt and unlawful agreement, the defendant thereupon made and delivered to said John Bippus the said alleged promissory note, and the said John Bippus did thereupon accept the said alleged note and lend and advance to the defendant the said sum of $300, and the defendant says that the said sum of $50 and the said interest at the rate of ten per centum per annum so agreed to be paid to said John Bippus for said loan and forbearance, as aforesaid, and so secured, as aforesaid, exceeds the rate of ten dollars for the forbearing of $100 for one year, contrary to the statute in such case made and provided, whereby the said John Bippus forfeited the whole of said fifty dollars and interest, as aforesaid, and the said plaintiff cannot recover the same or any part thereof.

6. And for a further plea to the first and second counts of said declaration, the defendant says that the said alleged causes of action did not accrue within three years next before the bringing of said action.

W. C. PRENTISS,
Attorney for Defendant.

14 DISTRICT OF COLUMBIA, *ss:*

Charles S. Richards, being first duly sworn, says that he is the defendant in the cause mentioned in the caption of the pleadings to which this affidavit is attached; that he never had any dealing with the plaintiff in said cause and is not indebted to her in any sum whatever, but did on or about September 6, 1894, borrow from

John Bippus, her husband, the sum of $300, for which the said Bippus received from the affiant the note copy of which is set out as particulars of demand in the plaintiff's declaration; that the affiant received from said note only the sum of $300, and at and before the delivery of said note agreed with the said John Bippus to pay the $50 additional covered by the note, besides ten per cent. interest for use of the said $300, and the affiant is advised and believes that the said transaction was and is usurious, and that the said note was and is void; that the defendant understood from said John Bippus at the time the said loan was made and said note given, and expects to prove at the trial, that the said $300 was the said John Bippus' own money; that the said John Bippus then requested that said note be drawn to the order of his wife for the reason, as he then stated, that he had had some financial trouble and did not want to take the note in his own name; that, in addition to the credits admitted in the plaintiff's declaration, he paid the said John Bippus, on account of said loan of $300, the sum of $28 on May 31, 1896, and the sum of $5 in or about the year 1896, for which he is entitled to additional credit; that the said credits admitted by the plaintiff and the additional credits claimed by the defendant were all
15 paid by check to order of said John Bippus, except one payment of $5 to him in cash, and that no demand by or on behalf of said plaintiff was ever made on account of said loan or note until the filing of said suit, but that the said John Bippus always claimed the money due on said loan or note as due to him and made frequent demand for same, and the affiant is informed and believes that the said suit should have been brought by the said John Bippus, and that the plaintiff, Eunice A. Bippus, has no right to sue upon the said note or for the balance due on account of said loan of $300.

CHARLES S. RICHARDS.

Subscribed and sworn to before me this seventh day of July, A. D. 1900.

MILDRED P. CHURCH,
Notary Public.

[SEAL.]

16 *Joinder in Issue, &c.*

Filed July 13, 1900.

In the Supreme Court of the District of Columbia.

* * * * * * *

Joinder in Issue.

1. The plaintiff joins issue on the defendant's first plea.

Demurrer.

2. The plaintiff says that the defendant's second plea is bad in form.

NOTE.—Among the matters of law intended to be argued in support of the above demurrer is the following:

This action being in assumpsit, the plea *nil debet* is not germane.

Replication.

3. For replication to the defendant's third plea, the plaintiff says that she confesses that she is now and has been the lawful wife of one John Bippus, in manner and form as alleged in said plea, but says that the causes of action declared upon are matters having relation to her sole and separate property.

Demurrer.

4. The plaintiff says that the defendant's fourth plea is bad in substance.

17 NOTE.—Among the matters of law intended to be argued in support of the above demurrer are the following:

A. The promissory note declared upon, even if partially tainted with usury, as alleged, is not for this reason wholly void, as alleged, but is a valid and subsisting obligation to the full extent thereof in excess of the alleged usury, the said note having been executed and delivered in the District of Columbia and being governed by the *lex loci contractus aut actus.*

B. The matters and things alleged in said plea would not be admissable in evidence upon the trial of this action, because they would directly contradict the plain terms of the said note.

C. The said note, having been made and delivered by the defendant to the plaintiff, by its plain terms operates as an estoppel against its alleging or proving that it was made or delivered to some person other than the plaintiff, or that he had made no contract with the plaintiff.

D. The defendant is estopped from taking advantage of his own wrong if his said note be partially corrupt, as alleged.

E. The said plea does not aver that the said alleged excess of the said note over the admitted actual consideration therefor was not paid for the defendant, and at his request, by the plaintiff to the said John Bippus, an alleged third party to the said transaction between the plaintiff and defendant, for services rendered by him, the said John Bippus, to and for the defendant, and at his request,

18 in procuring the said loan from the plaintiff to the defendant; or that the said alleged excess was not paid by the plaintiff for the defendant, and at his request, to some or any person other than the defendant himself.

F. The matters and things alleged in the said plea are *res inter alios acta,* and there is no averment that the plaintiff was in any manner a party thereto or bound thereby.

Demurrer.

5. The plaintiff says that the defendant's fifth plea is bad in substance.

NOTE.—Among the matters of law intended to be argued in support of the above demurrer are the following:

A. There is no self-executing forfeiture of usury, even if the said note be partially usurious, as alleged.

B. The matters and things alleged in the said plea would not be admissable in evidence upon the trial of this action, because they would directly contradict the plain terms of the said note.

C. The defendant is estopped from taking advantage of his own wrong if said note be partially corrupt, as alleged.

D. The matters stated in paragraphs D, E, and F of the note to the demurrer to the fourth plea will also be argued in support of the demurrer to the fifth plea.

Replication.

6. For replication to the defendant's sixth plea the plaintiff says as follows:

A. The defendant within three years next before the bringing of this action acknowledged the said debt and note and un-
19 & 20 conditionally promised the plaintiff to pay the same.

B. On, to wit, October 1, 1896, and within three years next before the bringing of this suit, the defendant paid to the plaintiff the sum of twenty-five dollars on account of the said note, which payment was duly credited thereon.

C. On, to wit, January 15, 1898, and within three years next before the bringing of this suit, the defendant paid to the plaintiff the sum of five dollars on account of the said note, which payment was duly credited thereon.

Motion to Strike Out.

The plaintiff moves the court to strike out the defendant's second plea, for that this action being in assumpsit, the plea of *nil debet* is not germane.

THOMAS M. FIELDS,
Attorney for Plaintiff.

* * * * * * *

21 & 22 *Præcipe Withdrawing Demurrer, &c.*

Filed September 14, 1900.

In the Supreme Court of the District of Columbia.

* * * * * * *

The plaintiff hereby withdraws her demurrer to and motion to strike out the defendant's second plea and joins issue thereon.

THOMAS M. FIELDS,
Attorney for Plaintiff.

Sept. 14, '00.

* * * * * * *

23 *Defendant's Further Amended Pleas.*

Filed September 17, 1900.

In the Supreme Court of the District of Columbia.

* * * * * * *

Comes now the defendant, by his attorney, and by leave of the court first had and obtained, for further amended pleas to the first count of the plaintiff's declaration as amended, says:

1*a*. That the said alleged promissory note was made and delivered by the defendant to one John Bippus, lawful husband of the plaintiff, for a loan of three hundred dollars made by the said John Bippus to the defendant, and that before making of the said loan and note it was, corruptly and against the form of the statute in such case made and provided, agreed by and between the said John Bippus and the defendant that the said John Bippus should lend to the defendant the said sum of three hundred dollars for the period of six months, and that for the forbearance of the said sum for the said term of six months the defendant should pay the said John Bippus the sum of fifty dollars, and in addition thereto interest on the said $300 and the said $50 at the rate of ten per centum per annum, and that for securing the said loan of $300 and the payment of the said sum of $50 and the said interest the defendant should make and deliver to the said John Bippus

24 the said alleged promissory note, drawn to the order of the wife of the said John Bippus, and that in pursuance of the said corrupt and unlawful agreement the defendant thereupon made and delivered to the said John Bippus the said alleged promissory note, and the said John Bippus did thereupon accept the said alleged note and lend and advance to the defendant the said sum of $300, and the defendant says that the said sum of $50 and the said interest, at the rate of ten per centum per annum, so agreed to be paid to the said John Bippus before the making of the said note and thereupon secured by the said note, as aforesaid, drawn to the order of the plaintiff, the lawful wife of the said John Bippus, exceeds the rate of ten dollars for the forbearance of one hundred dollars for one year, contrary to the statute in such case made and provided, whereby the said John Bippus and the plaintiff forfeited the whole of the said fifty dollars and interest, as aforesaid, and the plaintiff cannot recover the same or any part of either thereof.

2*a*. That before the making of the said alleged promissory note it was, corruptly and against the form of the statute in such case made and provided, agreed by and between the plaintiff and the defendant that the plaintiff should lend to the defendant the sum of $300 for the term of six months, and that for the forbearance of the said sum for the said term of six months the defendant should pay the plaintiff the sum of fifty dollars, and in addition thereto interest on the said $300 and the said $50 at the rate of ten per centum per

annum, and that for securing the said loan of $300 and the
25 payment of the said sum of fifty dollars and the said interest the defendant should make and deliver to the said plaintiff the said alleged promissory note, and that in pursuance of the said corrupt and unlawful agreement the defendant thereupon made and delivered to the plaintiff the said alleged promissory note, and the plaintiff did thereupon accept the said alleged note and lend and advance to the defendant the said sum of $300, and the defendant says that the sum of $50 and the said interest, at the rate of ten per centum per annum, so agreed to be paid to the said plaintiff exceeds the rate of ten dollars for the forbearance of one hundred dollars for one year, contrary to the statute in such case made and provided, whereby the plaintiff forfeited the whole of the said fifty dollars and interest, as aforesaid, and cannot recover the same or any part of either thereof.

W. C. PRENTISS,
Attorney for Defendant.

Joinder in Issue.

Filed September 20, 1900.

In the Supreme Court of the District of Columbia.

* * * * * * *

The plaintiff joins issue on the defendant's pleas 1*a* and 2*a*
26 to the amended declaration herein.

THOMAS M. FIELDS,
Attorney for Plaintiff.

Memorandum.

December 3, 1900.—Verdict for plaintiff for $300, with interest at 10 % for 6 months from September 6, 1894, and thereafter at 6 % until paid, less a credit of $35.00.

27 Supreme Court of the District of Columbia.

FRIDAY, *December 14th*, 1900.

Session resumed pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * * * *

EUNICE C. BIPPUS, Plaintiff,
vs.
CHARLES S. RICHARDS, Defendant. } No. 42145. At Law.

This cause coming on to be heard upon the defendant's motion for a new trial, and the same having been heard, it is considered that said motion be, and the same is hereby, overruled and judgment on verdict ordered. Therefore it is considered that the plaintiff recover against the defendant the sum of three hundred ($300)

dollars, with interest at 10% (ten per cent.) for six months from September 6th, 1894, and thereafter at 6% (six per cent.), less a credit of thirty-five ($35) dollars, until paid, being the money payable by said defendant to said plaintiff by reason of the premises, together with her costs of suit, to be taxed by the clerk, and have execution thereof.

28 Supreme Court of the District of Columbia.

FRIDAY, *December 21st*, 1900.

Session resumed pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * * * *

Now come again the parties herein, by their respective attorneys; whereupon the defendant, by his attorney, in open court, notes an appeal to the Court of Appeals of the District of Columbia from the judgment herein; and the court thereupon fixes the bond on said appeal, to operate as a supersedeas, in the sum of one thousand ($1,000) dollars.

The defendant, by his attorney, also submits to the court for its consideration the bill of exceptions herein taken during the trial, and prays that it may be duly signed, sealed, and made part of the record, now for then, which is accordingly done.

29 *Bill of Exceptions.*

Filed December 21, 1900.

In the Supreme Court of the District of Columbia.

* * * * * * *

Be it remembered that in the trial of this cause before the Honorable Andrew C. Bradley, an associate justice of the supreme court of the District of Columbia, and a jury regularly empanelled and sworn to try the issues pending between the plaintiff and defendant, the plaintiff, in order to maintain and prove the issues upon her part joined, by her counsel offered and read to the jury her own deposition, taken at Manitou, Colorado, wherein she testified, upon written interrogatories, as follows:

Direct examination:

1. What is your name, age, residence, and occupation? A. Eunice C. Bippus; 43 years old; permanent residence, Chicago, Illinois; temporary residence, Manitou, Colorado; housekeeper.

2. Who is the plaintiff in this action? A. I am.

3. Who is the defendant in this action? A. Charles S. Richards.

4. Do you know him? If yea, when and where did you first become acquainted with him? A. Yes; in Washington, D. C., in
30 the autumn of 1894. I don't recollect the exact date when I met him first.

5. Did you ever have any business transaction with him? If yea, when and where did you have it and what was it? A. Yes; in Washington, D. C.; on September 6th, 1894. I loaned him (Charles S. Richards) three hundred dollars.

6. Look at the promissory note now shown you, dated September 6, 1894, and marked on the back "Plaintiff's Exhibit E. C. B. No. 1," and state who wrote "C. S. Richards" thereon and thereto. A. The defendant, Charles S. Richards.

7. Who is the "Eunice C. Bippus" named therein as the payee on the said note? A. I am.

8. Who is the present owner and holder of said note? If you, how long have you been said owner and holder? A. I am. I have been continuously the holder and owner since its date, September 6th, 1894.

9. What, if any, consideration did you give for the said note and to whom and when? A. I gave three hundred dollars to the defendant, Charles S. Richards, on September 6th, 1894.

10. If you gave only $300, why was the note drawn for three hundred and fifty dollars? A. The loan was negotiated by my husband, Mr. John Bippus, for Mr. Richards, the defendant. Mr. Richards promised to pay Mr. Bippus a commission of fifty dollars for the latter's services in the transaction. As a matter of convenience, this fifty dollars was included in the note and is to be paid to Mr.
31 Bippus by me when the note is paid.

11. Have you received anything from the defendant on account of this note; if yea, when and how much? A. Yes; on Oct. 1st, 1896, I received twenty-five dollars.

12. Is it subject to any other credits? A. No; except five dollars paid to my attorney, Mr. Fields, on January 15, 1898.

13. On September 6, 1894, were you a married woman; if yea, who was your husband? A. I was a married woman on September 6, 1894; John Bippus was my husband.

14. Are you still married to the same husband and is he still living? A. Yes.

15. To whom did the money loaned to the defendant for this note belong? If you, whence did you acquire it? A. To me; from the sale of my real estate in Atlanta, Ga.

16. Was it, or any part of it, acquired by you, directly or indirectly, by gift or conveyance from your husband? A. No.

17. What, if anything, is now due you on said note? A. Three hundred and twenty dollars, with interest from the date of the note.

18. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this case or either of them, or that may be material to the subject
32 of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer. A. No.

Cross-examination:

1. Did you personally transact the business about the note shown you? If not, state who did transact it. A. No; my husband.

2. Where were you on September 6, 1894? A. In Washington, D. C.

3. If you have answered the sixth interrogatory, state how you know who wrote C. S. Richards on said note. A. I know from the fact of Charles S. Richards having admitted it.

4. Did you ever see him write his name? A. Not that I remember of.

5. If you have answered that you are the holder of said note, state from whom you received it. A. The note was handed to me by my husband after the loan had been made.

6. Has not your husband always had the note in his possession? A. No.

7. State how you know why the note was drawn for $350 if you gave only $300 and you have so testified. A. Because it included my husband's commission of fifty dollars.

8. Did you ever have any conversation with the defendant
33 about the transaction or the note? A. Yes.

9. If you have testified that you received anything from the defendant on account of this note, state how you know. A. I received the twenty-five dollars indorsed on the note and read the letter in which the money was sent.

10. Didn't your husband receive any and all payments on account of the note? A. The defendant sent the twenty-five dollars to my husband and he (my husband) handed it over to me.

11. How do you know what credits the note is subject to? A. I know of no credits the note is subject to other than the payments indorsed thereon.

12. If you have answered that the money loaned to the defendant for the note in question belonged to you, how do you know it was your money? A. I know it was mine because I got it from the sale of my property in Atlanta, Georgia.

13. Is it not the fact that you have no information whatever in regard to the transaction other than was communicated to you by your husband? A. No.

14. Is it not the fact that you have no personal knowledge whatever in regard to the transaction with the defendant? A. No.

15. If you have any personal knowledge in regard to the
34 transaction, state what you know of your personal knowledge.

A. I was not present when the loan was made and my knowledge is based on the fact of having furnished the money and receiving the note after the loan was made and having read several letters from the defendant on the subject. Again I called upon Charles S. Richards personally with the note—to collect money on said note.

16. How do you know how much is due on the note? A. From the fact of what has been paid and credited thereon.

17. What was your husband's legal residence on September 6, 1894—that is, where did he claim to have his home or the right to vote? A. Our home was in Washington, D. C., on the corner of 11th and K streets; we had no other home during our residence there; my husband claimed no other place as his home at that time that I am aware of.

And thereupon, upon objection by counsel for plaintiff that the same was hearsay, and motion to strike out, the court sustained the objection to so much of the answers of the witness as purported to state what her husband told her of the conversation between him and the defendant and of what transpired between them *and* the loan was negotiated and the note was delivered to John Bippus.

Thereupon the plaintiff offered and read to the jury the original note referred to in said deposition, the signature to which was also admitted by the defendant:

35 $350. WASHINGTON, D. C., *September 6th*, 1894.

Six months after date I promise to pay to the order of Eunice C. Bippus three hundred and fifty dollars at the National Bank of the Republic, value received, with interest at 10 per cent. per annum.

C. S. RICHARDS.

Thereupon the plaintiff rested, and the defendant, by his counsel, moved the court to instruct the jury to return a verdict for the defendant, for that the plaintiff's evidence failed to show that the note in suit, or the money which was the consideration for the same, was the separate estate of the plaintiff; which motion the justice presiding overruled; to which ruling the defendant, by his counsel, then and there excepted, and the exception was duly noted by the justice presiding, on his minutes, before the jury retired to consider their verdict.

And thereupon the defendant, to prove and maintain the issues upon his part joined, testified that he did not know or see the plaintiff in the matter of the negotiating of the loan and making of the note in suit; that his dealing was entirely with John Bippus; that he went to Mr. Bippus and asked him to loan him $300, and Mr. Bippus said he had the money and would do it, provided the defendant would agree to pay him fifty dollars as a bonus for the loan; to which the defendant, needing the money at the time, agreed, and executed the note in suit and received only three hundred dollars for the same; that he understood from Mr. Bippus that it was his,
Mr. Bippus', money he was borrowing; that Mr. Bippus said
36 he wanted a note drawn payable to his wife because he had had some financial troubles in the South and didn't want the note in his own name, and asked if the defendant had any objection to drawing it payable to Bippus' wife, and the defendant told him he had not, and so drew it; that in addition to the amounts credited on the note in suit he had paid Mr. Bippus in money five dollars.

The defendant, by his counsel, further offered and read the following letter:

HUNTINGTON, INDIANA, *Oct.* 1, 1896.

Charles S. Richards, Washington, D. C.:

DEAR SIR: I have this day banked the check you sent me for $25.00 and have endorsed the amount on your $350.00 note, and this will answer as your receipt for same. I hope you will find it possi-

ble to remit more this month than you did before, as my expenses more than eat up my income.

I hope we will see better times after the election of Bryan, as we are all for him out this way. How is it down there?

Yours, etc., JOHN BIPPUS.

And the plaintiff further testified that the note referred to in said letter was the note in suit, which was the only thing he then owed Bippus.

The defendant, by his counsel, further offered and read the following receipt:

37 WASHINGTON, D. C., *Jan.* 15, 1898.

Received of W. C. Prentiss, Esq., five dollars on account of claim of John Bippus *v.* Charles S. Richards.

$5. THOMAS M. FIELDS,
Att'y for John Bippus.

And it was thereupon admitted by counsel for the plaintiff that the five dollars mentioned in said receipt was the five dollars credited on the note in suit.

Thereupon the defendant rested and the evidence on both sides was concluded, the foregoing being substantially all of the evidence offered on both sides.

Thereupon the defendant, by his counsel, prayed the court to instruct the jury as follows:

1. The jury are instructed that if they believe from the evidence that the money received from John Bippus by the defendant was not the separate property of the plaintiff—that is, that it was not derived otherwise than from her husband, directly or indirectly—their verdict must be for the defendant.

Which said prayer was refused, because the testimony of the plaintiff was that the amount of $300 advanced by her upon the note was her separate estate, and there was no countervailing proof.

2. The jury are instructed that the plaintiff can recover, if at all, only the actual sum loaned to the defendant, less such sums as may have been paid upon the note in suit.

Which said prayer was refused, because there was no evidence that the jury should consider tending to show that the plain-
38 tiff's contract was usurious.

And to the ruling of the court in refusing the said prayers and each of them the defendant, by his counsel, then and there excepted, and the exception was duly noted by the justice presiding, on his minutes, before the jury retired to consider their verdict.

After noting the said exceptions and making the same a part of the record, and which is also made a part hereof, the counsel for plaintiff stated that he did not claim the fifty dollars bonus forming part of the note, but only claimed the sum of $300 advanced on the note, with interest, less the credits, amounting to $35.00; and thereupon, neither the counsel for the plaintiff nor the counsel for the

defendant desiring to address the jury, the court instructed the jury that upon the whole testimony the plaintiff was entitled to recover three hundred dollars, with interest, at ten per centum per annum, from date to the maturity of the note and six per centum per annum thereafter, less credits shown by the evidence, amounting to $35; to which charge the defendant, by his counsel, objected and excepted in so far as the same was inconsistent with the prayers asked and refused above, and upon no other ground, and the exception was by the presiding justice then and there entered upon his minutes before the jury returned their verdict; and thereupon the jury returned their verdict for the plaintiff in accordance with the said instruction by the court.

And the defendant, by his counsel, moves the court to sign and seal this bill of exceptions, to have the same force and effect as if each and every of said exceptions had been separately signed and sealed by the justice presiding; which motion was by the court
39 granted; and thereupon the defendant, by his counsel, requested the court to sign, seal, enroll, and make a part of the record this the defendant's bill of exceptions, according to the form of the statute in such cases made and provided, and it is accordingly done, now for then, this twenty-first day of December, A. D. 1900.

A. C. BRADLEY, *Justice.* [SEAL.]

Memorandum.

January 4, 1901.—Appeal bond filed.

Order for Transcript.

Filed January 18, 1901.

In the Supreme Court of the District of Columbia, the 18th Day of January, 1901.

* * * * * * *

40 The clerk of said court will please prepare transcript of record in the above cause, including therein declaration (without affidavit), pleas (without affidavit), joinder in issue, order giving leave to amend, further plea to declaration as amended, replication, demurrer, order sustaining demurrer, amended and further pleas, joinder in issue, demurrer, replication, motion to strike out, joinder in issue to replication, withdrawal of demurrer & motion to strike out, filed Sep. 14, 1900; order sustaining demurrer, M. 39, p. 318; further amended pleas, joinder in issue, note of verdict, order entering judgment, appeal, and bill of exceptions.

W. C. PRENTISS,
Att'y for Defendant.

41 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 40, inclusive, to be a true and correct transcript of the record, as per the directions of counsel herein filed, and copy of which is made part hereof, in cause No. 42145, at law, wherein Eunice C. Bippus is plaintiff and Charles S. Richards is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 30th day of January, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

42 In the Court of Appeals of the District of Columbia.

CHARLES S. RICHARDS, Appellant,
vs.
EUNICE C. BIPPUS, Appellee. } No. 1051.

It is hereby stipulated and agreed by the parties hereto that the following parts of the record shall be omitted in printing, viz:

All captions except the first two.
The affidavit on page 3.
The last six lines on page 5.
The last nine lines on page 19.
All of page 20.
All of page 22.

W. C. PRENTISS,
Attorney for Appellant.
THOMAS M. FIELDS,
Attorney for Appellee.

(Endorsed:) No. 1051. Court of Appeals. Chas. S. Richards *v.* Eunice C. Bippus. Stipulation to omit parts of record in printing. Court of Appeals, District of Columbia. Filed Feb. 16, 1901. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 1051. Charles S. Richards, appellant, *vs.* Eunice C. Bippus. Court of Appeals, District of Columbia. Filed Feb. 12, 1901. Robert Willett, clerk.

Robert C

CLERK

Court of Appeals, District of Colum

JANUARY TERM, 1901.

No. 1051.

CHARLES S. RICHARDS, Appellant,

vs.

EUNICE C. BIPPUS.

BRIEF FOR APPELLANT.

W. C. PRENTISS,

Court of Appeals, District of Columbia

JANUARY TERM, 1901.

No. 1051.

CHARLES S. RICHARDS, Appellant,

vs.

EUNICE C. BIPPUS.

BRIEF FOR APPELLANT.

Statement of the Case.

This was a suit by the appellee, a married woman, upon a note for $350, dated September 6, 1894, payable to her order six months after date. with interest at ten per cent. per annum, delivered by the appellant to John Bippus, husband of the appellee, for a loan of $300.

The declaration contained a fatal misdescription of the note and the defendant felt safe in pleading the general issue, reserving special defenses. At the first trial the misdescription developed and the plaintiff withdrew a juror and took leave to amend, the declaration in the Record (p. 1) being the original as amended.

The amendment having cured the defect, but the declaration not disclosing coverture and averring separate estate, the defendant pleaded coverture of plaintiff (non-joinder of husband). The plaintiff replied separate estate, to which the defendant demurred upon the ground of departure. The court below reviewed the pleadings, held the declaration sufficient to sus-

tain suit in relation to separate estate, held the plea bad because it did not add traverse of separate estate, and gave leave to plead over.

The replication having estopped the plaintiff from maintaining the suit otherwise than as in relation to separate estate, the defendant acquiesced in the ruling and pleaded to the merits: 1 and 2, general issue; 3 coverture and traverse of separate estate; 4, usury invalidating the whole cause of action; 5, usury forfeiting interest; and 6, limitations. Demurrer to the pleas of usury being sustained with leave to amend, the defendant pleaded usury forfeiting interest in two amended pleas; 1a, treating the husband as principal; and, 2a, treating the wife as principal (R. pp. 10, 11.) And issue being joined upon pleas 1, 2, 3, 1a and 2a and upon replication to the plea of limitations, the case again went to trial.

The plaintiff's evidence consisted of the note and her own deposition taken upon interrogatories (R. pp. 12, 14), wherein she testified, in substance, that the loan of $300 was negotiated by the husband, that she was to turn over to him as his commission the fifty dollars when paid, and that she acquired the $300 from sale of her property in Georgia. She did not disclose the source of her title to the property in Georgia and showed no personal knowledge of the transaction with Richards (see motion to strike out sustained, R. p. 15). Motion for verdict for defendant, because separate estate was not shown, being overruled, the defendant testified, in substance, that he dealt with Mr. Bippus as principal, at Bippus' demand agreed to add $50 to the note as bonus for the loan and made the note to the order of Mrs. Bippus at Mr. Bippus' request, the latter explaining that he had had financial trouble in the South and didn't want the note in his own name. The defendant also offered a letter from Mr. Bippus and a receipt given by Mr. Fields as attorney, both in the name of Mr. Bippus as the creditor. (R. pp. 15, 16.)

The defendant prayed an instruction submitting the issue of separate estate to the jury, which was refused upon the ground that the testimony of the plaintiff was that the amount of $300 advanced by her upon the note was her separate estate and there was no countervailing proof; and a second instruction limiting recovery, if any, to the actual amount advanced, less credits, which was refused upon the ground that there was no evidence that the jury should consider tending to show that the plaintiff's contract was usurious. The defendant reserved exception to each of these rulings.

Thereupon the court instructed the jury to return a verdict for the plaintiff for $300 and interest, less credits; to which the defendant reserved a formal exception.

Assignment of Errors.

The Court below erred:

1. In refusing defendant's first prayer.
2. In directing verdict for plaintiff.
3. In refusing defendant's second prayer.
4. In directing jury to include interest in the verdict.

POINTS AND AUTHORITIES.

First and Second Assignments of Error.

a. *The appellee fails to trace to Richards' hands the money claimed to have been hers.*

If her husband was the real principal, as the testimony of Richards tends to show, the note in legal effect was payable to him and he could sue alone thereon (State *v.* Krebs, 6 H. and J. 37), and title in a stranger would have to be derived through indorsement by him. But the wife claims, not as purchaser, but as payee, and the burden is on her to show that she was the real principal, disclosed or undisclosed.

Her testimony, in effect, is merely that she furnished $300

to her husband (when not stated), and received the note after the loan was made.

Compare Trimble *v.* Thorson, 80 Iowa, 246, where it was shown that the husband had in his hands for investment money of the wife derived by her from the estate of her mother and the wife was charged with the amount of the note on the husband's books when the loan was made.

b. *There is no evidence of separate estate.*

It is incumbent upon the wife to allege and prove the facts establishing separate estate and giving her a right to sue.

Edwards *v.* Sheridan, 24 Conn. 165.
Ridgeley *v.* Crandall, 4 Md. 442.
Barr *v.* White, 22 Md. 265.
Fiske *v.* Bigelow, 2 Mac. A. 427.
Offutt *v.* Dangler, 5 Mackey 313.
Foertsch *v.* Germuller, 9 App. D. C. 357.

The burden is upon the wife to establish separate estate and the presumption is always that money or property belongs to the husband.

Seitz *v.* Mitchell, 94 U. S. 580.
Reeves *v.* Webster, 71 Ill. 307.
Johnson *v.* Johnson, 72 Ill. 489.
Quigley *v.* Swank, 11 Pa. Sup. Ct. 602.
Hord *v.* Owens, 20 Tex. Civ. Ap. 21.
Clark *v.* Clark, 21 Tex. Civ. Ap. 371.
Hydrick *v.* Burk, 30 Ark. 124.
Hewitt *v.* Burritt, 3 App. D. C. 229.
Edwards *v.* Entwisle, 2 Mackey, 43.

She merely retreats one step and says the money was derived from the sale of her property in Georgia.

In the absence of proof to the contrary, the property rights of married women in the states will be presumed to be the same as in this District—

Howard *v.* C. & O. R. R. Co. 12 App. D. C. 300.

Or that the common law is still in force—

Van Ingen *v.* Brabrook, 27 Ill. App. 401.
King *v.* O'Brien, 33 N. Y. Sup. Ct. 49.
Hydrick *v.* Burk, 30 Ark. 124.

And the burden is still upon her to show how she acquired title, the presumption being that the husband's money purchased.

Quigley *v.* Swank, Supra.
Clark *v.* Clark, Supra.
Hydrick *v.* Burk, Supra.
Storrs *v.* Storrs, 23 Fla. 274.

And this burden is not removed by her answer in the negative to the direct interrogatory—

> Was it (the money loaned Richards) or any part of it, acquired by you, directly or indirectly, by gift or conveyance from your husband?

for her answer is merely a conclusion of law from facts not disclosed.

Compare Johnson *v.* Johnson, 72 Ill. 489.

In answer to cross-interrogatory she merely reiterates that the money was derived from sale of her property in Georgia.

c. *If the plaintiffs proof does not wholly fail, it is not conclusive.*

The appellee's testimony being taken on written interrogatories, the onus is more strongly upon her to disclose the facts. In such case, imperfect and evasive answers go to credibility.

Weeks on Depositions, Sec. 504.

The defendant's proof tends to show that the appellee's husband acted in the transaction as principal, lent the money as his own, exacted a bonus of $50, had the note drawn for both principal and bonus payable to his wife because he had had financial trouble in the South (presumably Georgia), received payment on account and credited same on the note, demanded more in his own right, and placed the note for collection in the hands of Mr. Fields who receipted for a further payment in the husband's name.

Had the husband been acting as agent, lending his wife's money, he would no doubt have taken a note payable to himself for his bonus, as is usually done in such cases.

Compare Trimble *v.* Thorson, 80 Iowa 246.

Considering all this in connection with the meagre, imperfect and evasive evidence of the wife, the inference is more than fair that the husband is the party in interest seeking to shield himself behind his wife for an ulterior purpose, and we submit that the whole case should have been submitted to the jury upon the question of separate estate in the wife.

Third and Fourth Assignments of Error.

There is no escape from the taint of usury.

Viewing the transaction in the light most favorable to the appellee and admitting, for the sake of the argument, that the husband was not principal in the transaction, we have the case of the lender's agent exacting a commission of 33⅓% per annum in addition to interest at 10% per annum, and including the commission in the principal of the note drawn to the order of the lender, with the knowledge and approval of the lender, who accepts the note and sues upon it claiming the full amount in her declaration and affidavit under the 73d rule.

> In Sullivan *v.* Snell, 1 Mac. A. 587, a note for $500 at 90 days, negotiated for $460 to the first holder, was held usurious.

A bonus included in the principal of a note is treated as interest and if, added to the interest expressed, it exceed the legal rate, the transaction is usurious.

27 Enc. of Law, 1009.

Upon the general subject of commissions or bonuses compare.—

Upton *v.* O'Donahue, 49 N. W. 267.
Bank *v.* Flint, 54 Ark. 40.
Ammondson *v.* Ryan, 111 Ill. 506.
Borcherling *v.* Trefz, 40 N. J. Eq. 502.
Meers *v.* Stevens, 106 Ill. 549.

"And no decision can be found where a court of justice has sustained a charge of 20% where any knowledge of such charge was traceable to the money lender. But here is 20% in addition to 8% per annum. Indeed Lord Tenterden in Meagre *v.* Simmons, 1 Mood and M. 125, held that where the lender stipulates with the borrower that the latter shall pay a commission to the lender's agent it is usurious although the lender himself retains nothing but the legal discount. This, Mr. Tyler says, is a well considered case. The truth is, the enormous commissions charged are merely intended as a mask thrown over the transaction."

Sherwood *v.* Roundtree, 32 Fed. Rep. 113.

The same Court further says:

"The services rendered in the negotiation of this loan had they been rendered the defendant, when in fact they were not, would not have been worth, at the most, more than a one-tenth of the price charged. Nor is this, under the circumstances, a question for the jury. It is usurious on its face and in the absence of explanatory proof it was the duty of the court to say so. Steele *v.* Whipple, 21 Wend. 103. This is especially true as a matter of practice in a court of the United States. Hathaway *v.* East Tennessee V. T. R. R., 29 Fed. Rep. 489."

We submit that the Court below erred in directing the verdict and that the judgment must be reversed and the cause remanded for a new trial.

W. C. PRENTISS,
Attorney for Appellant.

IN THE

Court of Appeals, District of Columbia.

JANUARY TERM, 1901.

No. 1051.

CHARLES S. RICHARDS, APPELLANT,

vs.

EUNICE C. BIPPUS, APPELLEE.

BRIEF FOR APPELLEE.

THOMAS M. FIELDS,
Attorney for Appellee.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 4-19-'01

IN THE

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BRIEF FOR APPELLEE.

POINTS AND AUTHORITIES.

1. The appellant's first point is that the appellee fails to trace into the appellant's hands the money claimed to have been hers.

The appellee testified (R., p. 12) that she knows Richards, having first met him here in the autumn of 1894; that on September 6, 1894, she had loaned him $300 (R., p. 13); that he signed the note; that she is and has been since its date the owner and holder of it; that she gave him $300 for it, and that this money belonged to her.

Richards does not attempt to deny this testimony, and his

mere recital of what John Bippus told him, with the letter and receipt offered by him, cannot overcome the appellee's testimony under her oath. She was not a party to such recital or papers, and her ownership and rights cannot be cut off nor abridged by such matters. The evidence in the record is conclusive that the money loaned to Richards was her money, and it is submitted that the appellant's first point is not tenable.

2. The appellant's second point is that there is no evidence of separate estate.

The appellee testified (R., p. 13) that the money loaned Richards on the note was her own money; that she derived it from the sale of her property in Georgia, and that this money was not nor was any part of it derived, directly or indirectly, from her husband by gift or conveyance from him.

There is absolutely no countervailing proof in the record which in any legal manner impeaches her in this respect. No fault is found, nor need be found, with the authorities cited by the appellant establishing the well-known rules in an action such as this. The necessary allegations have been made by the appellee, the burden of proof has been recognized and assumed by her, and her pleadings and proofs fully comply with the strictest requirements of the law. If the appellant wanted more evidence from her he had the means at hand to readily get it, and was not forced to go to trial upon her evidence as given in her deposition. He was satisfied with her deposition; went to trial upon it knowing its contents in advance and lost. Her answer that the money loaned to Richards was not derived directly or indirectly from her husband by gift or conveyance from him is a statement of fact and not a mere "conclusion of law from facts not stated," as claimed by the appellant. Surely her deposition makes a *prima*

facie case of separate estate which has in no manner been met or overcome by the appellant.

It is therefore submitted that the appellant's second point is also untenable.

3. The appellant's third point is that, if the plaintiff's proof does not wholly fail, it is not conclusive.

This has been answered above. It is impossible to correctly say that her proof has wholly failed, and even if only *prima facie* in the first instance, it has become conclusive for failure of the appellee to meet or overcome it. There is nothing in the record to impeach her credibility, nor can her answers be fairly said to be either imperfect or evasive, as contended by the appellant. The husband might well have acted as her agent up to the point of action on the note, but neither his acts nor declarations nor those of counsel could destroy her ownership or rights or prevent her from asserting them by action at law. There is no room in the record to impute improper conduct or motives to the appellee or her husband. The shoe more nearly fits the other foot. There was no evidence of separate estate to offset that offered by the appellee to go to the jury, and there was nothing for the court to do but to give a peremptory instruction in this respect. Surely a verdict in favor of the defendant upon this point would necessarily have been set aside by the court upon the evidence in the record.

It is therefore submitted that the appellant's third point is unsound.

4. The appellant's third and fourth assignments of error deal with the question of usury as affecting the note in suit.

Even if this contention be sound it can only cause a forfeiture of interest, and thus produce only a slight modification of the judgment rendered (R. S. D. C., sec. 715).

The appellee did not claim at the trial nor recover the additional $50 of said note nor any interest upon it (R., pp. 16, 17). The difficulty with the appellant's evidence upon this point was that it utterly failed to connect the plaintiff with his claim of usury, nor did the evidence show such facts as made her contract usurious. A payment or an agreement to pay to her husband a commission for his services in behalf of the appellant in procuring the loan to which she was not a party and of which she was not to get the least benefit could not operate to charge her as a usurer, and so cause a forfeiture of interest on her money which she *bona fide* loaned him.

That the matters recited in evidence do not charge the appellee with usury, see Abb. Tr. Ev., 1010, 1011, and cases cited; Leonhard *vs.* Flood, 56 S. W. Rep., 781; Dellerby *vs.* Goodwyn, 37 S. E. Rep., 376; West *vs.* Equitable Mortgage Co., 37 S. E. Rep., 357.

Even a court of equity will not relieve against usury unless the loan with legal interest has been repaid.

Stanley *vs.* Gadsby, 10 Pet., 521.

Chapman *vs.* Clark, 3 Mackey, 185.

Even actual usury between Richards and John Bippus, of which the appellee had no knowledge or to which she was not a party, could not affect her.

Moncure *vs.* Dermott, 13 Pet., 345.

So the payment of a sum in addition to legal interest, when dependent upon a contingency, does not render the transaction usurious.

Spain *vs.* Brent, 1 Wall., 604.

Commissions paid by a borrower to a third person will not render the loan usurious..

Grant *vs.* Phœnix Life Ins. Co., 121 U. S., 105.

The appellant has suffered nothing whatever from the alleged usury. He has not paid it. Even the small sum which he has paid was not applied to the $50 commissions, as it could have been, but was credited upon the actual money and interest due from him. His defense in this cause is utterly devoid of moral and legal support, and is only an attempt to avoid what he himself admits to be a just and unpaid loan by supposed legal technicalities. The judgment merged the note, and he can never be called upon by any person to pay the $50, about his mere agreement to pay which—not payment or liability for payment—he makes so much complaint, and by reason of which he seeks to evade his just debt which he owes to the appellee. He shows no case which entitles him to any aid from a court of justice.

The judgment appealed from should be affirmed with costs.

Respectfully submitted.

THOMAS M. FIELDS,
Attorney for Appellee.